

106TH CONGRESS
2D SESSION

S. 3177

To require the Secretary of Health and Human Services to establish minimum nursing staff levels for nursing facilities, to provide for grants to improve the quality of care furnished in nursing facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, SEPTEMBER 22), 2000

Mr. GRASSLEY (for himself, Mr. BREAUX, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require the Secretary of Health and Human Services to establish minimum nursing staff levels for nursing facilities, to provide for grants to improve the quality of care furnished in nursing facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursing Home Staff
5 Improvement Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Part I of the Health Care Financing Ad-
2 ministration's Report to Congress: Appropriateness
3 of Minimum Nurse Staffing Ratios in Nursing
4 Homes was completed in August of 2000 and
5 showed the following:

6 (A) Quality of care may be significantly
7 impaired when staffing thresholds fall below 2.0
8 nurse aide hours per resident day, 1.0 reg-
9 istered nurse and licensed practical nurse hours
10 per resident day and 0.45 registered nurse
11 hours per resident day.

12 (B) Below this threshold, residents are
13 more likely to suffer life threatening illnesses
14 secondary to pressure sores, weight loss and
15 preventable infections, and rates of avoidable
16 hospitalization increase significantly.

17 (C) Fifty-four percent of nursing home fa-
18 cilities do not provide 2.0 nurse aide hours per
19 resident day and approximately 1/2 of nursing
20 home facilities would require greater than a 10
21 percent change in staffing to meet this minimal
22 standard.

23 (D) The 2.0 nurse aide hours per resident
24 day is a threshold below which residents lives

1 are at risk, not a standard for the provision of
2 appropriate care.

3 (2)(A) A minimum of 2.9 nurse aide hours per
4 resident day are necessary to deliver 5 necessary
5 daily care services.

6 (B) Over 92 percent of nursing home facilities
7 fall below the 2.9 nurse aide hours per resident day
8 standard and would require a 50 percent increase in
9 staffing to meet this standard.

10 (C) The 2.9 nurse aide hours per resident day
11 standard is based on a conservative assumption and
12 understates the real staffing levels necessary for a
13 nurse aide to complete all tasks that constitute ade-
14 quate care.

15 (3)(A) Facilities that serve residents with more
16 complex medical conditions will require higher staff-
17 ing levels.

18 (B) Minimum staffing levels that take into ac-
19 count case mix have not yet been established.

20 (C) Part II of the Health Care Financing Ad-
21 ministration report, which has not yet been com-
22 pleted, will report to Congress on minimum staffing
23 levels according to the facility's resident acuity level.

1 **SEC. 3. COMPLETION OF REPORT TO CONGRESS ON ADE-**
 2 **QUATE NURSING FACILITY STAFFING RE-**
 3 **QUIREMENTS.**

4 (a) IN GENERAL.—Section 4801(e)(17)(B) of the
 5 Omnibus Budget Reconciliation Act of 1990 (42 U.S.C.
 6 1396r note) is amended—

7 (1) by striking “January 1, 1999” and insert-
 8 ing “July 1, 2001”;

9 (2) by inserting “and optimal minimum” after
 10 “minimum” each place it appears;

11 (3) by striking the period and inserting a semi-
 12 colon;

13 (4) by striking “such study recommendations”
 14 and inserting “such study—

15 “(i) recommendations”; and

16 (5) by adding at the end the following:

17 “(ii) an examination of the cost and
 18 benefits associated with establishing staff-
 19 ing minimum and optimal minimum ratios;

20 “(iii) a description of the data used in
 21 Phase II of the study to expand the multi-
 22 variate analysis from 3 States to a more
 23 representative national sample;

24 “(iv) an analysis of proposed refined
 25 case mix classification methods considered
 26 in Phase II of the study;

1 “(v) a description of the case studies
2 used to validate the Phase I findings of the
3 study; and

4 “(vi) an examination of other issues
5 that impact the recruitment and retention
6 of certified nursing assistants.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) take effect as if included in the enactment
9 of section 4801 of the Omnibus Budget Reconciliation Act
10 of 1990 (Public Law 101–508; 104 Stat. 1388–211).

11 **SEC. 4. ESTABLISHMENT OF APPROPRIATE MINIMUM**
12 **STAFFING REQUIREMENTS.**

13 (a) NOTICE OF PROPOSED RULEMAKING.—Not later
14 than 6 months after the date that the Secretary of Health
15 and Human Services (in this section referred to as the
16 “Secretary”) submits the report to Congress required
17 under section 4801(e)(17)(B) of the Omnibus Budget
18 Reconciliation Act of 1990 (42 U.S.C. 1396r note) regard-
19 ing the study of establishing appropriate minimum care-
20 giver to resident levels and appropriate minimum super-
21 visor to caregiver levels for skilled nursing facilities par-
22 ticipating as providers of services under the medicare pro-
23 gram under title XVIII of the Social Security Act (42
24 U.S.C. 1395 et seq.) and nursing facilities receiving pay-
25 ments under the medicaid program under title XIX of

1 such Act (42 U.S.C. 1396 et seq.) that includes rec-
2 ommendations regarding appropriate minimums for such
3 levels, the Secretary shall issue a notice of proposed rule-
4 making with respect to the promulgation of a final regula-
5 tion requiring compliance with appropriate minimum care-
6 giver to resident levels and appropriate minimum super-
7 visor to caregiver levels as a condition for such facilities
8 to receive payments under such programs.

9 (b) FINAL REGULATION.—Not later than 6 months
10 after the issuance of the notice required under subsection
11 (a), the Secretary shall issue the final regulation (to be
12 effective upon publication) that was the subject of such
13 notice.

14 (c) DEFINITION OF APPROPRIATE.—In this section,
15 the term “appropriate” means the staffing threshold level
16 required to attain a good or optimal quality outcome with
17 respect to a resident of a skilled nursing facility partici-
18 pating as a provider of services under the medicare pro-
19 gram under title XVIII of the Social Security Act (42
20 U.S.C. 1395 et seq.) or of a nursing facility receiving pay-
21 ments under the medicaid program under title XIX of
22 such Act (42 U.S.C. 1396 et seq.), as opposed to avoiding
23 a bad outcome with respect to such a resident.

1 **SEC. 5. GRANTS TO IMPROVE STAFFING LEVELS AND THE**
2 **QUALITY OF CARE IN NURSING FACILITIES.**

3 (a) **AUTHORITY TO AWARD GRANTS.**—The Secretary
4 of Health and Human Services shall award grants to
5 States on a competitive basis for the purpose of improving
6 staffing levels in nursing facilities in order to improve the
7 quality of care to residents of such facilities.

8 (b) **APPLICATIONS.**—Each State that wishes to re-
9 ceive a grant under this section shall submit an application
10 at such time, in such form, and complete with such infor-
11 mation as the Secretary may require, except that any such
12 application shall include at least a certification that the
13 application was developed through an open, public process.

14 (c) **REQUIREMENTS FOR USE OF FUNDS.**—

15 (1) **PERMISSIBLE USES.**—

16 (A) **IN GENERAL.**—A State awarded a
17 grant under this section shall use funds pro-
18 vided under the grant to provide financial sup-
19 port or technical assistance for projects oper-
20 ated by nursing facilities, labor organizations,
21 nonprofit organizations, community colleges, or
22 other organizations, or through joint efforts of
23 such entities and organizations, that are de-
24 signed to do any or all of the following:

25 (i) Enhance staff recruitment and re-
26 tention efforts.

1 (ii) Establish centers of expertise and
2 training.

3 (iii) Establish career ladders for cer-
4 tified nurse assistants, including additional
5 or advanced training opportunities.

6 (iv) Provide additional training for
7 nursing facility direct care staff.

8 (v) Improve workplace safety.

9 (vi) Improve nursing facility manage-
10 ment.

11 (vii) Conduct other staffing initiatives
12 to improve patient outcomes, as approved
13 by the Secretary.

14 (B) APPLICABILITY OF NURSING HOME RE-
15 FORM PROVISIONS.—Funds made available
16 under a grant awarded to a State under this
17 section may only be used to provide financial
18 support or technical assistance for any project
19 described in subparagraph (A) to the extent
20 that the activities conducted under the project
21 are consistent with the requirements of sections
22 1818 and 1919 of the Social Security Act (42
23 U.S.C. 1395i–3, 1396r).

24 (C) PROHIBITION.—No funds made avail-
25 able under a grant awarded to a State under

1 this section may be used to provide financial
 2 support or technical assistance for any project
 3 described in subparagraph (A) that is con-
 4 ducted at, or for the benefit of, a nursing facil-
 5 ity that is owned or operated by a State, coun-
 6 ty, or local government.

7 (2) NO SUPPLANTATION OF FUNDS.—Funds
 8 made available under a grant awarded to a State
 9 under this section may only be used to supplement,
 10 not supplant, other funds that the State expends to
 11 carry out activities described in paragraph (1)(A).

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 13 are authorized to be appropriated to the Secretary for pur-
 14 poses of carrying out this section \$500,000,000 for each
 15 of fiscal years 2001 and 2002. Funds appropriated in ac-
 16 cordance with this subsection for a fiscal year shall remain
 17 available through the end of the succeeding fiscal year.

18 (e) REPORTS AND SECRETARIAL EVALUATION.—

19 (1) STATE FINAL REPORTS.—Each State that
 20 is awarded a grant under this section shall submit
 21 a final report to the Secretary on the use of funds
 22 awarded under the grant not later than 3 months
 23 after the earlier of—

24 (A) the completion of the project or
 25 projects provided financial support or technical

1 assistance with funds received under the grant;
2 or

3 (B) the conclusion of the 2-year period
4 that begins on the date that the State receives
5 such grant funds.

6 (2) SECRETARIAL EVALUATION AND REPORT.—

7 Not later than 6 months after the final State report
8 is submitted to the Secretary under paragraph (1),
9 the Secretary shall submit to Congress a report eval-
10 uating the extent to which the grant program estab-
11 lished under this section assists States in improving
12 staffing levels in nursing facilities.

13 (f) DEFINITIONS.—In this section:

14 (1) NURSING FACILITY.—The term “nursing
15 facility” means a skilled nursing facility partici-
16 pating in the medicare program established under
17 title XVIII of the Social Security Act (42 U.S.C.
18 1395 et seq.) or a nursing facility receiving pay-
19 ments under the medicaid program established
20 under title XIX of such Act (42 U.S.C. 1396 et
21 seq.).

22 (2) SECRETARY.—The term “Secretary” means
23 the Secretary of Health and Human Services.

1 **SEC. 6. PROVIDING ACCURATE INFORMATION ON STAFF-**
2 **ING.**

3 (a) MEDICARE.—

4 (1) DATA ON STAFFING LEVELS.—Section
5 1819(b) of the Social Security Act (42 U.S.C.
6 1395i–3(b)) is amended by adding at the end the
7 following new paragraph:

8 “(8) SUBMISSION OF DATA ON STAFFING LEV-
9 ELS.—

10 “(A) IN GENERAL.—A skilled nursing fa-
11 cility shall submit to the Secretary, at such
12 time as the Secretary shall specify and on a
13 standard reporting format developed by the
14 Secretary, data with respect to nursing staff
15 that—

16 “(i) includes the total number of nurs-
17 ing staff hours and coverage levels per
18 shift furnished by the facility to residents
19 for which payment is made under section
20 1888(e), broken down by total certified
21 nurse aide hours, total licensed practical or
22 vocational nurse hours, and total registered
23 nurse hours; and

24 “(ii) is attested to in writing by the
25 facility as accurate.

“(B) PUBLICATION OF DATA.—The Secretary shall provide for the publication on the Internet Site of the Department of Health and Human Services known as Nursing Home Compare the facility-specific nursing staff information described in subparagraph (A). The Secretary shall update such information periodically.”.

(2) INFORMATION CONCERNING PATIENT CLASSIFICATION.—Section 1819(b)(4) of the Social Security Act (42 U.S.C. 1395i–3(b)(4)) is amended by adding at the end the following new subparagraph:

“(D) INFORMATION CONCERNING RESIDENTS.—The skilled nursing facility shall provide the Secretary, in such form and manner and at such intervals as the Secretary may require, a classification of all residents of the skilled nursing facility that accords with the resident classification system described in section 1888(e)(4)(G)(i), or such successor system as the Secretary may identify.”.

(b) MEDICAID.—

(1) DATA ON STAFFING LEVELS.—Section 1919(b) of the Social Security Act (42 U.S.C.

1 1396r(b)) is amended by adding at the end the fol-
 2 lowing new paragraph:

3 “(8) SUBMISSION OF DATA ON STAFFING LEV-
 4 ELS.—

5 “(A) IN GENERAL.—A nursing facility
 6 shall submit to the Secretary, at such time as
 7 the Secretary shall specify and on a standard
 8 reporting format developed by the Secretary,
 9 data with respect to nursing staff that—

10 “(i) includes the total number of nurs-
 11 ing staff hours and coverage levels per
 12 shift furnished by the facility to residents
 13 for which payment is made under the State
 14 plan, broken down by total certified nurse
 15 aide hours, total licensed practical or voca-
 16 tional nurse hours, and total registered
 17 nurse hours; and

18 “(ii) is attested to in writing by the
 19 facility as accurate.

20 “(B) PUBLICATION OF DATA.—The Sec-
 21 retary shall provide for the publication on the
 22 Internet Site of the Department of Health and
 23 Human Services known as Nursing Home Com-
 24 pare the facility-specific nursing staff informa-
 25 tion described in subparagraph (A). The Sec-

1 retary shall update such information periodi-
2 cally.”.

3 (2) INFORMATION CONCERNING PATIENT CLAS-
4 SIFICATION.—Section 1919(b)(4) of the Social Secu-
5 rity Act (42 U.S.C. 1395r(b)(4)) is amended by add-
6 ing at the end the following new subparagraph:

7 “(D) INFORMATION CONCERNING RESI-
8 DENTS.—The nursing facility shall provide the
9 Secretary, in such form and manner and at
10 such intervals as the Secretary may require, a
11 classification of all residents of the nursing fa-
12 cility that accords with the resident classifica-
13 tion system described in section
14 1888(e)(4)(G)(i), or such successor system as
15 the Secretary may identify.”.

16 **SEC. 7. INFORMATION ON NURSING FACILITY STAFFING.**

17 (a) MEDICARE AMENDMENTS.—Section 1819(b) of
18 the Social Security Act (42 U.S.C. 1395i–3(b)), as amend-
19 ed by section 6(a), is further amended by adding at the
20 end the following new paragraph:

21 “(9) INFORMATION ON NURSE STAFFING.—A
22 skilled nursing facility shall post daily for each nurs-
23 ing unit of the facility and for each shift the current
24 number of licensed and unlicensed nursing staff di-
25 rectly responsible for resident care and the number

1 of residents per unit and per shift. The information
2 shall be displayed in a uniform manner and in a
3 clearly visible place.”.

4 (b) MEDICAID AMENDMENTS.—Section 1919(b) of
5 the Social Security Act (42 U.S.C. 1396r(b)), as amended
6 by section 6(b), is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(9) INFORMATION ON NURSE STAFFING.—A
9 nursing facility shall post daily for each nursing unit
10 of the facility and for each shift the current number
11 of licensed and unlicensed nursing staff directly re-
12 sponsible for resident care and the number of resi-
13 dents per unit and per shift. The information shall
14 be displayed in a uniform manner and in a clearly
15 visible place.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section take effect on the first day of the first month
18 that begins at least 6 months after the date of the enact-
19 ment of this Act.

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